IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2006

CORAM

THE HONOURABLE MR JUSTICE P.K.MISRA
and
THE HONOURABLE MR JUSTICE J.A.K.SAMPATH KUMAR

Habeas Corpus Petition No. 911 Of 2006

Moorthy @ Chengam Moorthy ... Petitioner

Vs

1.The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2. The District Magistrate and
District Collector,
Vellore District, Vellore-9. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for the issue of a writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 11.01.2006 in his Office Ref.No.C3.D.O.No. 4/2006 and set aside the same and consequently direct the respondents to produce the detenu, Moorthy @ Chengam Moorthy, who is confined in Central Prison, Vellore, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr. Philip Ravindran Jesudoss

For Respondent : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor.

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O R D E R

(Order of the Court was made by P.K.MISRA, J.)

Heard the learned counsel appearing for both parties.

2. The detenu himself has filed the above habeas corpus petition. He has been detained under Act 14 of 1982 on the allegation that he is a 'Goonda'.

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3. In the grounds of detention, the detaining authority has referred to seven adverse cases, out of which, one case relates to the year 2000 and the other cases relate to the year 2005. It is contended by the learned counsel appearing for the petitioner that in all these cases as well as the ground case, which is alleged to have been occurred on 9th December 2005, the name of the petitioner has not been shown as accused and there is no material on record to indicate that the detenu was involved in the adverse cases.

4. The offences were registered under various sections including Sections 397, 380, 379, 457, 394 and 392 IPC. In such offences, normally, the offenders are unknown persons and in the course of investigation, such persons are apprehended. In the present case, the detaining authority has referred to the confessional statement alleged to have been made by the detenu, wherein he has disclosed his involvement on the earlier occasions. Even though in criminal trial such confessional statement may not be admissible except to the extent permitted under Section 27 of the Evidence Act, there is no embargo on the detaining authority in relying upon such confession for forming the subjective satisfaction and the Court dealing with applications under Habeas Corpus Petition is not entitled to decide the matter as an Appellate Authority in an objective manner. In such view of the matter, the contention of the petitioner that except the ground case, there was nothing to indicate about his earlier involvement in the adverse cases is not acceptable.

5. The second contention of the petitioner is to the effect that after the arrest, the factum of arrest was not intimated to the relatives of the petitioner, as contemplated by the Supreme Court in D.K.BASU -vs- STATE OF WEST BENGAL (1997 S.C.C (Crl.) 92). So far as this aspect is concerned, the Additional Public Prosecutor has produced before us the booklet, which indicates that the factum of arrest was intimated to the sister of the detenu and therefore, it cannot be said that the requirements of D.K.Basu's case has not been followed. Even otherwise, if such arrest is not intimated, that may be a ground to challenge the remand order and that will not be a ground to quash the subsequent order of preventive detention. This position has been clarified by the Division Bench decision in 2001 L.W. (Crl.) Page 443 (VADIVEL -vs- THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, DEPARTMENT OF PROHIBITION AND EXCISE AND ANOTHER), where, it has been observed as follows:-

> "10. Learned counsel for the petitioner further relied upon a decision of the Apex Court reported in 1997 SCC (Crl.) 92 (D.K.Basu -vs- State of West Bengal) and contended that the remand of the detenu was improper and that there is no valid remand since the guide-lines indicated in the said decision have not been complied with by the concerned Magistrate. The question whether the remand properly effected and in accordance with law is a matter to be agitated

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in a different proceeding and before a different Forum. If, really there was any failure to comply with the provisions of law with regard to remand of an accused, it is always open to the accused to question the same by initiating suitable proceedings.

11. In the case on hand, we are only concerned with the validity of a detention order and whether the constitutional safeguards have been complied with in this matter. The Detaining Authority has to be satisfied only about the detenu being in remand. He has to, on the materials placed before him, arrive at a subjective satisfaction, about the conduct of the detenu as to whether his activities are such as to affect the public order and health and if it is so, whether it is necessary to detain him, invoking the provisions of Act 14 of 1982. It is not for the Detaining Authority to find out whether the remand of the detenu by the concerned court was a proper exercise of jurisdiction or not. Moreover, a reading of this judgment would show that the Supreme Court laid down the guide lines to be followed by the Police Officers, whenever they effect arrest. In para-5, the Apex Court has stated that it is therefore, appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, as preventive measures. Their Lordships of the Apex Court has set out about 11 guidelines which all relate to only police officers and nothing is mentioned in these 11 guidelines about the duties or the procedure to be following by the Magistrate in such cases. Therefore, the decision relied upon by the learned counsel for the petitioner, to put it mildly, has no application to the facts of this case.

6. The counsel for the petitioner also contended that except the confessional statement, there is no other material. It is now well settled by a series of decisions of this Court including one reported in 1986 L.W. (Crl.)221 Full Bench (SUMAN -vs- STATE OF TAMIL NADU) that the confessional statement made before the police can be the basis to form subjective satisfaction of the detaining authority. Such view has been subsequently followed by the Division Bench consisting of Justice Srinivasan, as His Lordship then was, in 1993 L.W. (Crl.) Page 113 (SUBBAIAH -vs THE COMMISSIONER OF POLICE, MADRAS CITY AND ANOTHER). Following the aforesaid decisions, we negative the contention raised by the petitioner.

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7. In view of the aforesaid decisions, we are not inclined to accept the submissions made by the learned counsel for the petitioner. No other contention has been raised. Accordingly, the Habeas Corpus Petition is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai-600 009.
2.The District Magistrate and District Collector, Vellore District.
3.The Superintendent, Central Prison, Vellore.
4.The Joint Secretary to Government,State of Tamil Nadu,
Public (Law and Order) Dept.,Fort St. George, Chennai-600 009.
5.The Public Prosecutor, High Court, Chennai.

1 cc to Mr.Philip Ravindran, Advocate, Sr. 53300

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